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Supreme Court of the United States

OCTOBER TERM, 1955

No. 297

UNION TRUST COMPANY, ET AL.,
Petitioners

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioners, Union Trust Company of the District of Columbia and Melville W. Stuart as Executors of the Estate of Ralph F. Miller, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in No. 12,017 below affirming but reducing the amount of the judgment of the United States District Court for the District of Columbia.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 221 F. 2d 62.[1] The opinion of the District Court is reported at 113 F. Supp. 80 (also I R. 36-46).

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[1] The opinion of the Court of Appeals is also set out in Appendix A (pp. 1a-41a) of the Government's cross-petition for a writ of certiorari entitled *United States of America, Petitioner* v. *Union Trust Company, et al.* That Appendix and the record filed

JURISDICTION

The judgment of the Court of Appeals was entered February 8, 1955 (U. S. 42a-44a). Petition for rehearing in banc was denied on April 15, 1955 (U. S. 47a-48a) and for rehearing by original division on May 11, 1955 (U. S. 48a-49a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

As a result of the negligence of Government personnel operating the control tower at Washington National Airport across the Potomac in Virginia, two planes collided over the District of Columbia causing the death of petitioners' decedent, a passenger in one of the planes. In these circumstances, does the Federal Tort Claims Act reference to "the law of the place where the [negligent] act or omission occurred" (28 U.S.C. 1346(b)) alter the applicability of the long established conflict of laws rule applying the law of the District of Columbia, where the negligent act took effect, rather than the law of Virginia where the negligent actor stood?

STATUTE INVOLVED

The Federal Tort Claims Act, in pertinent part (28 U.S.C. 1346(b), provides:

> ". . . the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and

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with the Government's cross-petition will be used for purposes of this petition and the petition in the companion case entitled *Union Trust Company, et al., Petitioner* v. *Eastern Air Lines, Inc.* In both petitions, reference to said Appendix A of the Government's petition will typically read "US 1a" (i.e., page 1 of that appendix) and to the Joint Appendix below "I R. 1" (i.e., volume I Record page 1).

after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

STATEMENT OF THE CASE [2]

As a result of a fatal mid-air crash of November 1, 1949 near Washington National Airport between a military type P-38 and an Eastern Air Lines DC-4 carrying 51 passengers (including petitioners' decedent) and a crew of four, the petitioners filed wrongful death actions in the District of Columbia against the operators of both planes and the United States of America as the owner and operator of the airport and its control tower (I R. 2-5, 12-14; see also pre-trial proceedings I R. 21-32). It was alleged and the trial judge found that the crash, which occurred while both planes were approaching to land at Washington National, was caused by the concurring negligence of the control tower personnel who cleared both planes to land at the same time on the same runway and who failed to take timely and appropriate action to notify the two planes to separate (I R. 36-38, 44-45; 113 F. Supp. at 81, 84-85).

After a trial to the court under the Federal Tort Claims Act, the District Court entered findings of fact and con-

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[2] Because of the limited scope of the question here presented, the Statement will be limited to the necessary facts. A more detailed narrative appears in the opinion below (U. S. 1a-41a), although petitioners do not entirely subscribe thereto. See also Statement of the Case in Petition for Writ of Certiorari being contemporaneously filed herewith in *Union Trust Company, et al.* v. *Eastern Air Lines, Inc.*

clusions of law (I R. 49-52) including a finding that the accident occurred in the District of Columbia (I R. 51; see also I R. 45) wherein there is no statutory ceiling for wrongful death, and not in Virginia where, as of November 1, 1949, the maximum recovery allowable was $15,000. Judgment was entered in the District Court against the United States for $50,000 (I R. 55).

On appeal by the United States, the court below affirmed the District Court's judgment but reduced it to $15,000 "to meet the limitation imposed by the law of Virginia on the amount of recovery" (U. S. 41a). The opinion below, written by Judge Miller who dissented on the issue here presented, accepted the trial court finding that the accident occurred in the District of Columbia but strongly disagreed with the majority's view that under §1346(b) of the Tort Claims Act, ". . . the Government's liability [is] to be measured under the law of the place where its negligent employee's act or omission occurred, and that therefore the Act requires Virginia law to be applied in this case" (U. S. 39a-40a). The majority below were of the opinion that the trial judge erred in applying "The general conflicts rule [which] disregards the law of the place of the negligent act or omission and, instead, uses the law of the place where the injury was sustained" (U. S. 39a). Judge Miller also dissented on petition for rehearing (U. S. 49a).

REASONS FOR GRANTING THE WRIT

I.

The Question Presented Is Novel; The Decision Below Is Plainly Erroneous.

The question here presented has not been directly passed upon by any other courts than those below in this case, although other federal courts have inferentially con-

strued 1346(b) as did the trial court here.[3] Moreover,

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[3] In *Praylou* v. *United States*, 208 F. 2d 291, 294 (C.C.A. 4, 1953), where plaintiff's barn in South Carolina was burnt by a falling Government plane, the court applied the absolute liability provisions of South Carolina's Uniform Aeronautics Act on the ground that the tort was the infliction of injury in South Carolina as to which South Carolina's local law of liability should control. The Fourth Circuit was clear in its view that *res ipsa loquitur* as declared by South Carolina would apply in the absence of proof of specific negligence. This plainly implies that the law of the place where the injury occurs controls without regard to the law of the state where the negligent employee acted.

See also *D'Anna* v. *United States*, 181 F. 2d 335 (C.C.A. 4, 1950) where plaintiff was injured by an auxiliary gas tank which fell from a Navy plane while engaging in a demonstration over Baltimore. There was some evidence that the tank had been negligently attached at Quonset Point, R. I., preparatory for the trip to Baltimore. The Court applied the law of Maryland (*res ipsa loquitur*) where the injury occurred. In the brief filed in that case by the Government on February 28, 1950, its position was exactly opposite to that taken below here; it stated (p. 7): "The Federal Tort Claims Act (Section 1346(b)) provides that in suits against the Government, the Government shall be liable or not liable to the claimant in accordance with the law of the State of Maryland, the place where the accident occurred . . ." citing *State of Maryland to the use of Burkhardt* v. *United States*, 165 F. 2d 896 (C.C.A. 4, 1947) holding that §1346(b) means that the law of the place of injury determines the nature and extent of the Government's liability.

There are other *res ipsa loquitur* airplane cases which have held the Government liable under the Tort Claims Act. The very application of the doctrine assumes that the law of the place of injury controls. The doctrine arises because of the unusual act of a plane dropping something or falling and is not concerned with the negligent employee's conduct at a place different from where the consequences of his conduct took effect. As a matter of fact, in many cases plaintiff would be unable to prove his case and the United States, consequently, would not bear the same liability as private persons if the *res ipsa* rule were not to apply. Yet if the place of the "act or omission" is, in multi-state torts, a place different from the place of injury, it would be impossible to prove where the act or omission occurred which, indeed, is often the reason for application of the *res ipsa* rule.

See also *Olson* v. *United States*, 175 F. 2d 510, 512 (C.C.A. 8, 1949), where a South Dakota resident was killed in a Utah acci-

parallel language in the Death on the High Seas Act has been construed to require application of the law of the place where the injury was occasioned rather than of the place where the negligent actor was located.[4]

For the reasons succinctly and aptly advanced by Judge Miller dissenting below on the point in issue (221 F. 2d at 80-81; U. S. 40a-41a), petitioner submits that the majority's construction of 1346(b) is plainly wrong. The only law review comment found to date, strongly supports Judge Miller's dissent. See 68 Harv. L. Rev. 1455 (No. 8, June 1955). In the face of an admitted long and well established conflicts rule that "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place,"[5] the total

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dent and the administratrix sued the Government in South Dakota. In holding that the administratrix's right to sue was determined by the wrongful death statute of Utah where the accident occurred, the court said:

> "Under the Act . . . the district court for the district in which the plaintiff resided has jurisdiction of the action but *the standards and tests of the state where the accident occurred controlled* on questions of negligence and the nature and extent of recovery including the capacity and rights of the plaintiff and the liability of the United States." (Emphasis supplied.)

Although in *Olson* no multi-state tort was involved, the language assumes that the general rule of conflicts was not discarded by the Tort Claims Act.

[4] *Lacey* v. *Wiggins Airways, Inc.*, 95 F. Supp. 916 (D.C. Mass., 1951). *cf*: *Smith & Son* v. *Taylor*, 276 U.S. 179, 72 L. ed. 520 (1928) and *Vancouver Steamship Co. Ltd.* v. *Rice*, 288 U.S. 445, 77 L. ed. 885 (1933).

[5] Restatement, *Conflict of Laws* (1934) §377. In multi-state torts where an act or omission occurs in one state and takes effect in others, the law of the state where the force impinges controls on the theory that the tort is not complete until the victim is hurt. See, e.g.: *Cameron* v. *Vandergriff*, 53 Ark. 381, 13 S.W. 1092 (1890) and *Dallas* v. *Whitney*, 118 W. Va. 106, 188 S.E. 766 (1936)—bullet shot across state line; *Reed & Barton* v. *Maas*, 73 F. 2d 359 (C.C.A. 1, 1934) and *Hunter* v. *Derby Foods*, 110 F. 2d

absence of any evidence of legislative intent to alter that rule for Federal Tort Claims litigation should be sufficient to resolve ambiguities in the language of 1346(b) in favor of the historical conflicts approach. Had Congress intended to alter that long established rule, certainly some clear showing of its intent and reasons would have appeared in the more than 30 years of consideration of federal tort claims legislation. Yet nowhere below (in the opinion or briefs) was any such expression of intent or reasons [6] disclosed other than in the testimony of then Assistant Attorney General Shea [7] and in the legislative history of the 1948 amendment of the Act [8] both of which

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970 (C.C.A. 2, 1940)—where goods negligently made in one state injures plaintiff in another; *Campbell* v. *Willmark Service System*, 123 F. 2d 240 (C.C.A. 3, 1941) and *O'Reilly* v. *Curtis Publishing Co.*, 31 F. Supp. 364 (D. Mass., 1940)—matter originating in one state and defaming plaintiff in another; *Iasigi* v. *Brown*, 17 How. 183, 194 (1854)—letter originating in one state defrauding plaintiff in another; *Gautier* v. *Pro-Football, Inc.*, 106 N.Y.S. 2d 553 (1951) and *Donahue* v. *Warner Bros. Pictures, Inc.*, 194 F. 2d 6 (C.C.A. 10, 1952)—invasion of plaintiff's privacy in one state by reason of television or films originating in another; *S. S. Samovar*, 72 F. Supp. 574 (N.D. Calif., 1947) and *McDonald* v. *Cape Cod Trawling Co.*, 71 F. Supp. 888 (D. Mass., 1947)—injuries at sea occasioned by negligent acts on land.

[6] In the Government Response to Appellees' Petition for Rehearing below it was argued that in many respects Congress had expressly and intentionally created different rules for adjudicating Government liability under the Act as contrasted with suits against private persons (at pp. 6-7). But in each such instance the legislative intent and purpose is evident in the language of the Act and the legislative history, whereas no reason has been advanced or can be fathomed for the purported change in the conflicts rule which the majority below held 1347(b) had effected.

[7] Quoted in opinion below at U. S. 40a-41a, 221 F. 2d at 80.

[8] This amendment, exclusively designed to eliminate an existing conflict between the Tort Claims Act and the wrongful death statutes of Alabama and Massachusetts which permitted recovery of punitive damages, gave a right of recovery against the United States in such states but limited recovery to compensatory dam-

support the view that 1346(b) adopted and did not alter the established conflicts rule.

It is interesting to note that in an effort to avoid the impact of the Shea testimony, in opposing rehearing below, the Government stated:

> "When it is remembered that uppermost in the minds of those working on a proposed tort claims law was negligence in the operation of vehicles, accidents caused by negligent driving of postal trucks or military vehicles (*Dalehite, supra,* 346 U. S. at 28), which seldom create conflict of laws problems, it is apparent that his remark can have little bearing on the question at issue."*

Thus even the Government concedes that the multi-state tort was not in the legislative mind in the drafting and enactment of 1346(b), so that the language of that provision cannot be conceived as an expression of legislative will to overturn a long and clearly established conflict of laws rule.

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ages. The House and Senate reports (H. Rept. 748 and S. Rept. 763, 80th Cong., 1st Sess.) both state:

> "Under the Federal Tort Claims Act, a claim for a death caused by the wrongful act of a Government employee shall be brought in the United States District Court for the District where the wrongful act occurred and the United States is expressly relieved from liability for punitive damages.
>
> *Each case is determined in accordance with the law of the state where the death occurred.*" (Emphasis supplied.)

* Government's Response to Appellees' Petition for Rehearing, p. 11. In the same Response, commenting on the Congressional reports on the 1948 amendment, the Government stated (p. 12):

> "The Committees obviously had in mind cases in which the place of the negligent act and the place of the resultant death were within one and the same jurisdiction, a state which only permitted punitive damages. *Clearly they were not addressing themselves to problems presented by multi-state torts.*" (Emphasis supplied.)

II.

The Question Presented Is of Substantial Importance By Reason of Increasing Volume of Federal Tort Claim Litigation and Multi-State Torts.

By reason of many other cases heretofore considered, this Court is well aware that the volume of litigation under the Federal Tort Claims Act is substantial and on the rise. Correspondingly, by reason of the increasing mobility of goods and persons the volume of multi or interstate torts is on the increase. Necessarily, therefore, questions will arise with greater frequency under the Act as to which of the laws of two or more states is to be applied in ascertaining the test and measure of Government tort liability. See, e.g., *Dalehite* v. *United States*, 346 U. S. 15 and particularly at 52-53, 97 L. ed. 1427, 1449-1450 (1952).

In short, lower federal courts will frequently be faced in the future with the problem as to which of two or more bodies of state substantive law is to be applied in Federal Tort Claim litigation depending upon resolution of the question raised by this petition. Since that question is clearly posed for decision here, the Court is given an early and decisive opportunity to delineate the path to be followed by the lower federal courts as the problem arises.

III.

The "Literal" Interpretation Given 1346(b) Below Produces Absurd Results.

If the controlling law is to be that of the place where the negligent Government employee acts as distinguished from the place where his act takes effect, many abnormal, absurd and impossible results would follow. A few hypothetical cases will be illustrative:

1. If the Government should negligently release a guided missile from its base at Guantanamo, Cuba, and it should strike and kill the plaintiff in the District of Columbia: (a) the Government would not be liable because the "act" occurred in a foreign country (*United States* v. *Spelar*, 338 U. S. 217, 94 L. ed. 3 (1949)), and (b) even if the Government were liable, notwithstanding *Spelar*, its liability for a death in the District of Columbia would be governed by the law of Cuba though the language of the District of Columbia death statute [10] is applicable to deaths resulting from injuries here. Such a result would also do violence to the express language used by this Court in *Feres* v. *United States*,[11] where it was recognized that the applicable law is the law of the place where one chooses to be at the time of injury.

2. Suppose an Air Force plane on a flight from California to Washington, D. C. is negligently serviced in California, Colorado and Kansas and by reason thereof crashes and kills the plaintiff in the District of Columbia (See *Dalehite supra*). Apart from the reasons indicated in *Feres* for applying the District of Columbia law, a further reason is that the law of the places of the negligent acts may be different from each other, and these differences may relate to problems of liability or damages or both. For example, in death cases California has no limit on amount of recovery, whereas Colorado's limit is $10,000 and Kansas $15,000. In Colorado the action must be brought by the surviving widow whereas in California and Kansas it must be brought by the personal representative. Additionally, to impose upon plaintiff the burden of proving what part of the negligence occurred in each of the 3 states would be an impossible task. And if the law of the place of the crash determines whether

[10] D.C. Code (1951 ed.) § 16-1201.

[11] 340 U. S. 135, 142-143, 95 L. ed. 152, 159 (1950).

res ipsa loquitur applies (see fn. 3 *infra*), how would that be applied where it differs from the law of the several jurisdictions where the "acts or omission" occurred. Is it reasonable to suppose that Congress intended such impossible results?

3. Suppose a Navy drone plane controlled by a Navy aircraft carrier at sea is negligently caused to fall in Washington. Or, suppose the drone was controlled from Harmon Field, Newfoundland (the same air base involved in the *Spelar* case, *supra*). What law governs? Suppose the fall was due to the Navy's negligent manufacture of certain parts for the drone at the Naval Air Station at Pensacola, Florida, or Norfolk Naval Air Station in Virginia. Should Florida or Virginia law apply to a District of Columbia death? Should the same death afford no relief because the Government is not liable for its acts or omissions at Harmon Field? Should the Death on the High Seas Act apply to the death of a man who never left the territorial confines of the District of Columbia?

Problems and absurd results such as those indicated by the foregoing hypothetical situations would be wholly avoided by this Court's taking jurisdiction and reversing the holding below insofar as it erroneously construed 1346(b).

IV.

Resolution of the Question Presented Affects the Question of Venue Under the Act; Absurd Result Under the Decision Below.

28 U.S.C. 1402(b), the venue provision of the Federal Tort Claims Act, provides for prosecution ". . . in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred" which, in its second alternative, is couched in language paralleling that of 1346(b) (see opinion below at U.S. 41a, 221 F. 2d

at 80-81). While the instant case presents no venue problem, since petitioners are residents of the District of Columbia wherein suit was filed, many of the other 40-odd wrongful death actions arising from this same accident and awaiting disposition of these test cases do present a possible venue problem with respect to actions pending in the District of Columbia because the plaintiffs in those cases are not residents of the District.[12] And a plaintiff may never know in which court to sue until after it is determined where the actor was when his negligent act was committed which later caused injury in a different district. Certainly future litigation of multi-state torts under the Act will present a venue problem depending upon the ultimate construction of 1346(b) and its effect on the construction of 1402(b).

If the decision below is left unreviewed and is law, there may arise in many future cases the practical problem of venue existing in alternate districts far removed from the scene of an accident and neither of which is convenient for the adjudication. Note, e. g., the *Dalehite* situation, assuming some or all of the plaintiffs not to be residents of Texas. If 1402(b) is to be construed as was 1346(b) below, the practical result might well be to preclude trial in the very district where the accident occurred and the evidence focused.

CONCLUSION

The question presented is patently one of grave importance in the expected volume of tort claims litigation involving multi-state torts. The decision below while the first in point is inferentially in conflict with other decisions under the Tort Claims Act and parallel legisla-

[12] In most instances, parallel "protective suits" were filed in Virginia or the districts of plaintiffs' residences.

tion. The decision is plainly wrong, flies in the face of a long established conflicts rule to the contrary and attributes to the Congress an intent to alter that rule notwithstanding that the only informative legislative history is to the contrary. Finally, the decision below creates serious practical difficulties in tort claim litigation and in determinations of venue. To avoid these problems, to correct the error below and to furnish an authoritative guide for future anticipated litigation involving the same question, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The United States has itself filed a petition for a writ of certiorari to review the decision of the court below in this cause (No. 296, Oct. T. 1955, *United States of America, Petitioner* v. *Union Trust Company, et al.*). We suggested there that the decision below, imposing an unprecedented liability upon the United States for alleged negligence in the performance of a purely regulatory function, and the rationale employed in reaching that result, present serious questions of current and future importance in the administration of the Federal Tort Claims Act. We did not, of course, raise the question brought forward in the

instant petition, which was decided adversely to the present petitioners, *viz.*, whether, under 28 U. S. C. 1346 (b), which provides that the United States shall be liable "in accordance with the law of the place where the act or omission occurred," such liability shall be determined under the law of the place where the negligent conduct occurred, or under the law of the place where the negligent conduct had its effect.[1]

Should the Court grant our petition for certiorari in No. 296, we do not oppose the granting of the instant petition. We believe it would then be appropriate and desirable that the entire Tort Claims Act case be before the Court for review. On the other hand, if our petition in No. 296 is

[1] The majority of the court below held that the explicit language of the Act requires application of the law of the place where the negligent employee's act or omission occurred, even though this be a departure from the general conflicts rule which normally disregards the law of the place of conduct and, instead, applies the law of the place where that conduct had its effect. Since the air traffic controllers' negligent acts (issuing clearances to land) and omissions (failing to issue warnings) occurred in the control tower located in Virginia, the court below held that Virginia law measures the Government's liability. Under Virginia law applicable in 1949 when the accident happened, recoveries for wrongful deaths were limited to $15,000. Va. Code 1942, § 5787. The trial court, finding that the mid-air collision occurred in the District of Columbia, had applied the District law and had awarded damages in the amount of $50,000 for the death of Ralph F. Miller. The appellate court reduced the judgment to $15,000 to accord with the Virginia law. See U. S. Pet. in No. 296, App A., pp. 39a–44a.

denied, we oppose the instant petition, first, because the additional question presented is not, of itself, of sufficient general importance at this time to warrant independent review, and, second, because the court below, in this limited aspect of the case, reached the correct result.

1. Referring to the very substantial and increasing volume of litigation which has arisen under the Tort Claims Act, petitioners (Pet. p. 9) predict that the lower federal courts will, in the future, frequently be faced with the question raised in their petition. Experience, however, has demonstrated the contrary. The fact is that, despite the many thousands of cases under the Tort Claims Act since its enactment in 1946,[2] this particular question has very rarely arisen. Petitioners point to no conflict of opinion on the question; indeed, they admit that it "has not been directly passed upon by any other courts than those below in this case" (Pet. p. 4).[3] Nor do

[2] Department of Justice records disclose that there are approximately 1,000 Tort Claims Act suits instituted every year.

[3] None of the opinions in the Tort Claims Act cases cited by petitioners (Pet. p. 5) discusses the question. The issue was raised in *Dalehite* v. *United States*, 346 U. S. 15, where fertilizer manufactured in Nebraska and Iowa exploded in Texas. The majority of the Court, having held recovery barred by the governmental function exception, did not reach the question. The dissenting Justices apparently were of the view that the Act requires application of the law of the place where the negligent conduct occurred. 346 U. S. at 52–3.

they indicate that the question is involved in any pending case, apart from the litigation arising out of this accident. Unlike the questions we raise in No. 296, it does not appear that resolution of the issue presented here will have any immediate widespread effect beyond the particular facts and parties involved in this general litigation. Although the extent of this litigation gives it a certain importance in itself, we believe that, nevertheless, petitioners' question, standing alone, has not yet assumed sufficient general importance to warrant review by the Court.

2. The question presented appears to be answered by the language of the Act which, in explicit terms, states that the liability of the United States is to be determined by the law of the place where the government employee's act or omission occurred.[4] Petitioners argue that, de-

[4] Section 1346 (b) confers on the district courts jurisdiction of claims against the United States for property damage or for "personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government * * * under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where *the act or omission occurred.*" [Emphasis added.] Section 2672 uses identical language in authorizing the head of each federal agency to make administrative adjustments of claims of $1,000 or less. See also Section 2674, which states that the Government shall be liable to the same extent as a private individual in like circumstances, and which provides in a paragraph added in 1947 (61 Stat. 722) that if, "in any case wherein death was caused, where the law of the place *where the act or omission complained of*

spite the use of this language, Congress really intended that the law of the place where the act or omission occurred be totally ignored; that the plain meaning of the language is to be rejected (a) because the rule it prescribes differs from the general conflicts rule, (b) because there is an absence of legislative history indicating a Congressional purpose to depart from that general rule, and (c) because in some situations the rule stated in the statute might prove difficult to apply.

a. There is no more authoritative guide to meaning than the language of the statute itself, *Osaka Shosen Line* v. *United States,* 300 U. S. 98, 101. It is difficult to conceive of any more precise language which could possibly have been used by Congress to command application of the law of the place of the negligent conduct than the words which it did employ. If Congress had not intended to measure the Government's liability by reference to the law of the place where the act or omission occurred, and instead had desired to impose the law of the place of "the tort," as petitioners and the dissenting judge below suggest, it could easily have done so. Thus, it could have said that the Government shall be liable "in accordance with the law of the place where the cause of action arose" or "in accord-

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occurred, provides * * * for damages only punitive in nature, the United States shall be liable for actual or compensatory damages * * *." [Emphasis added.]

ance with applicable State law." Or Congress might have ended the relevant sentence of the section (see fn. 4, *supra*) by placing a period after the words "liable to the claimant," without adding the additional clause "in accordance with the law of the place where the act or omission occurred." (Cf. fn. 7, *infra*, p. 9.) But it chose not to do so. Instead, it specifically directed application of the law of the place where the act or ommission occurred.

To accept petitioners' contention that the words "act or omission" mean the "tort" or the "consequences" of the act or omission would delete the words Congress employed and would result in a construction directly opposite to the ordinary meaning of the language used, for, in determining the place of the "tort" or of the legal "consequences" of an act under the general conflicts rule, the law of the place where the negligent act or omission occurred is virtually ignored. Contrariwise, giving the words their natural meaning avoids the necessity of such deletion and gives full significance to the clause. It accords, moreover, with the consistent pattern of the statute which, in almost every section, distinguishes between the "act or omission," on the one hand, and the consequent claim which "arises out of" or is based upon" or is "caused by" the act or omission, on the other.

Moreover, adherence to the literal mandate and natural meaning of the clause has the sensible

advantage of adopting the law of the state (a) in which the federal employee is located and is controlled by his superiors, (b) which determines the applicable standard of care governing the federal employee, (c) which fixes the rights and privileges of the actor, and (d) which results in greater simplicity and certainty.

b. In construing a statute, courts start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used. The language must be given its spontaneous meaning unless, perhaps, secondary legislative materials constitute "persuasive evidence" that a different meaning was intended; if the legislative materials resorted to are "without probative value, or contradictory, or ambiguous, * * * [they] will not be permitted to control the customary meaning of words." See *United States* v. *Dickerson*, 310 U. S. 554, 562.

Here, the ordinary meaning of the clause dictates a rule which differs from the general conflicts rule.[5] To compel the abandonment of the

[5] Departure from the general conflicts rule is but one of several instances under the Tort Claims Act in which the claimant's right to relief against the Government may differ from that which he might obtain against a private person in like circumstances. Among other instances are: the Act prescribes its own period of limitations which may be shorter than that of the state in which the tort occurs (28 U. S. C. 2401 (b)); the claimant cannot obtain trial by jury (*id.*, 2402); nor punitive damages, nor interest prior to judgment (*id.*, 2674); many specific torts are excluded from recovery (*id.*, 2680 (h)); etc.

natural meaning, it is necessary to find affirmative evidence, persuasive in nature, that Congress intended to retain the general conflicts rule. But the legislative data on which petitioners rely is sketchy and ambiguous and falls far short of persuading that the words were intended to mean the opposite of what they say. Thus, the Shea testimony (Pet. p. 7) can hardly be given probative value on this point because, as petitioners themselves recognize, his remarks were not addressed to the question of what law governs, but only to the venue provision. Obviously, considerations underlying problems of venue are substantially different from those determining applicable law.

Nor does the legislative history of the 1947 amendment of the Act shed any light (see fn. 4, *supra*, p. 4, and Pet. pp. 7–8[6]). To show that the general conflicts rule applies, petitioners stress the sentence in the Committee Reports that each case is determined "in accordance with the law of the state where the death occurred." But even under the general conflicts rule, it is not the law of the place of death that controls (one may be injured in Alabama and die in Georgia; under the general rule, the law of the place of injury applies—the place of death is

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These provisos merely illustrate the settled principle that, in consenting to suit against the Government, Congress may and does impose special conditions upon the right to sue.

[6] Petitioners refer to the amendment as "the 1948 amendment."

irrelevant). Clearly, the Committees were not addressing themselves to the problem of the multi-state torts, hence their reports are of no significance on this point.

Nor can the *absence* of legislative materials in support of the plain meaning of the words (cf. Pet. p. 7) be regarded as "persuasive evidence" that the plain meaning was not intended. Indeed, to permit the absence of legislative history to control the meaning of words used in a statute would be a total inversion of the rule stated in the *Dickerson* case, *supra*. Actually, the legislative history does contain support for the literal meaning.[7]

c. Petitioners suggest hypothetical situations in which it may be difficult to apply the rule

[7] Earlier tort claims bills provided that the United States "shall be liable to the same extent and in the same manner as a private individual under like circumstances," but did not contain the significant clause now in Sec. 1346 (b), *viz.*, "in accordance with the law of the place where the act or omission occurred." See Sec. 201 of S. 2690, 76th Cong., 1st Sess., and of H. R. 5373, 77th Cong., 2d Sess. The clause was inserted by a Committee revision of the proposed bills. The Committee described the change as "important" and explained that a "major difference is that the present [revised] bill subjects the determination of the validity of the claim, the defenses thereto, and the distribution of the recovery, to *the law of the place where the delinquent act or omission occurred*", *i. e.* to "the local law." Memorandum for the use of the Committee on the Judiciary, 77th Cong., 2d Sess.—Explanatory of Committee Print of H. R. 5373, pp. 6–7. [Emphasis added.]

required by the ordinary meaning of the clause (Pet. 9–11). But those particular difficulties—which are more likely to exist in briefs than in reality—cannot serve in themselves as justification for overturning the natural meaning in favor of a hidden or diametrically opposed reading. As the Court said in *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 617–8:

> "The natural meaning of words cannot be displaced by reference to difficulties in administration." * * * For the ultimate question is what has Congress commanded, when it has given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him.

Respectfully submitted,

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